

REMARKS/ARGUMENTS

Status of the Claims

Upon entry of the present amendment, claims 74-75 and 76-119 are pending. Claims 74-75 and 78-80 are amended. New claims 110-119 have been added.

Claim 74 has been amended to incorporate language from claim 78. Claims 75 and 78-80 are amended for proper dependence.

New claims 110-114 correspond to claims 74-75 and 78-80. Claim 110 sets forth that the probe consists essentially of a sample presenting surface and a moiety that binds to biotin immobilized by chemical bonding to the sample presenting surface. Support is found, for example, in Figures 19A-B (numbered as originally filed), on page 60, lines 17-22 and on page 67, line 18.

New claims 115-119 correspond to claims 74-75 and 78-80. Claim 115 sets forth that the probe comprises a sample presenting surface and a moiety that binds to biotin immobilized by chemical bonding directly to the sample presenting surface. Support is found, for example, in Figures 19A-B (numbered as originally filed), on page 60, lines 17-22 and on page 67, line 18.

No new matter is added by the present amendments and the Examiner is respectfully requested to enter them.

Allowable Subject Matter

The Examiner is thanked for indicating that claims 81-109 are allowed.

Telephonic Interview

The Examiner is thanked for graciously granting a telephonic interview to discuss the claims. The issues discussed are as set forth in the Office Action. Applicants understand that the Examiner will consider amendments to the probe claims as submitted with this response.

Double Patenting Rejection

The Examiner has rejected claims 74-75 and 78-80 under the judicially created doctrine of obviousness-type double patenting as allegedly obvious over claims 1, 21 and 31 of U.S. Patent No. 6,897,072. To the extent that the present rejection applies to the amended claims, this rejection is respectfully traversed.

As discussed previously, the probe of claims 74-75 and 78-80 of the present invention are patentably distinct for at least two reasons. First, the probe of claim 1 of the '072 patent requires a hydrogel. The probes of the present invention do not comprise a hydrogel.

Second, the probes of claims 21 and 31 of the '072 patent require a hydrogel component bound to a *biotin* functional group. By contrast, the probes of the present invention (i) have an avidin moiety immobilized by chemical bonding to the sample presenting surface, which is distinct from biotin, (ii) have a *moiety that binds to biotin* immobilized by chemical bonding directly to the sample presenting surface, which excludes a hydrogel intermediary linker, or (iii) consists essentially of a sample presenting surface and a *moiety that binds to biotin* immobilized by chemical bonding to the sample presenting surface, which excludes a hydrogel intermediary linker.

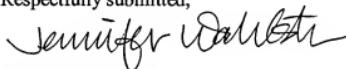
For the above reasons, the probes of the present invention and the probes of claims 1, 21 and 31 are patentably distinct. Accordingly, the Examiner is respectfully requested to withdraw this rejection.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 415-576-0200.

Respectfully submitted,



Jennifer L. Wahlsten
Reg. No. 46,226

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 415-576-0200
Fax: 415-576-0300
Attachments
JLW:jlw
61024851 v1